

BEFORE  
THE PUBLIC SERVICE COMMISSION OF  
SOUTH CAROLINA  
DOCKET NO. 2000-306-C - ORDER NO. 2001-266  
MARCH 26, 2001

|  |   |                 |
|--|---|-----------------|
| IN RE: Application of COMTECH 21, LLC for a    | ) | ORDER           |
| Certificate of Public Convenience and          | ) | GRANTING        |
| Necessity to Operate as a Reseller of          | ) | CERTIFICATE FOR |
| Intrastate Interexchange Telecommunications    | ) | LONG DISTANCE   |
| Services within the State of South Carolina    | ) | AUTHORITY AND   |
| and for Alternative Regulation of its Business | ) | ALTERNATIVE     |
| Service Offerings Pursuant to Commission       | ) | REGULATION      |
| Orders Nos. 95-1734 and 96-55.                 | ) |                 |

This matter comes before the Public Service Commission of South Carolina (the "Commission") by way of the Application of COMTECH 21, LLC ("COMTECH 21" or "Company") requesting a Certificate of Public Convenience and Necessity authorizing it to operate as a reseller of interexchange telecommunications within the State of South Carolina. In addition, the Company requests that the Commission regulate its business services, consumer card, and operator service offerings under alternative regulation identical to that granted to AT&T Communications in Order Nos. 95-1734 and 96-55 in Docket No. 95-661-C. The Company's Application was filed pursuant to Chapter 9 of Title 58 of the South Carolina Code Annotated, and the Rules and Regulations of the Public Service Commission of South Carolina.

The Commission's Executive Director instructed COMTECH 21 to publish, one time, a prepared Notice of Filing in newspapers of general circulation in the affected areas. The purpose of the Notice of Filing was to inform interested parties of COMTECH 21's Application and of the manner and time in which to file the appropriate pleadings for participation in the

proceeding. The Company complied with this instruction and provided the Commission with proof of publication of the Notice of Filing. No Petitions to Intervene were filed.

A hearing was convened on January 31, 2001, at 10:30 a.m. in the Commission's Hearing Room at 101 Executive Center Drive, Columbia, South Carolina. The Honorable William Saunders, Chairman, presided. Faye A. Flowers, Esquire, represented COMTECH 21. Florence P. Belser, Deputy General Counsel, represented the Commission Staff.

Marian DiNicola, Compliance Administrator of COMTECH 21, appeared and testified in support of the Application. COMTECH 21 is a Delaware corporation that has received authority to operate as a foreign corporation in the State of South Carolina. The Company also requested that the Commission regulate its long distance business services, operator service, and consumer card services offerings in accordance with the principles and procedures established for alternative regulation in Orders No. 95-1734 and 96-55 in Docket No. 95-661-C.

COMTECH 21 is a reseller of interexchange telecommunications services. Upon receiving certification from this Commission, COMTECH 21 plans to offer and provide Equal Access outbound interexchange switched (FG-D) telecommunications services purchased for resale under agreements with facilities based carriers and their affiliates registered to provide long distance services in South Carolina. COMTECH 21 seeks to serve small and medium businesses. COMTECH 21 will neither own nor operate any facilities or plant in South Carolina but will provide directly through affiliates all end-user sales, customer, and billing operations.

Ms. DiNicola offered testimony regarding the Company's technical, financial, and managerial ability to provide telecommunications services in South Carolina. She stated the key members of the management team have extensive experience in the telecommunications

industry. The record reveals that Richard Minervino, Sr. is President and Chief Executive Officer, and Chairman of the Board of Directors of COMTECH 21. Mr. Minervino has over twenty years experience in the telecommunications industry. Additionally, Mr. Minervino has formed several companies which have developed a series of telecommunications monitoring, network design, and cost reduction packages and has also engaged in the resale of their telecommunications services including cellular and long distance billing. Marie Marcarelli serves as Vice President and Secretary of COMTECH 21. Ms. Marcarelli has responsibility for establishing methods and procedures for all products and services, as well as developing, administering and negotiating client contacts. Ms. Minervino was previously employed by Southern New England Telephone and SNET Systems.

Regarding the Company's technical ability to provide telecommunications services in South Carolina, the testimony reveals COMTECH 21 will only utilize carriers properly certified by the Public Service Commission. As a reseller of interexchange service, COMTECH 21 relies on underlying carrier for technical assistance. Ms. DiNicola explained the Company's marketing procedures and discussed the Company's "anti-slamming" techniques. Ms. DiNicola also discussed the customer services provided by COMTECH 21. The record reveals the Company's name, address, and toll-free telephone number for customer inquiries and complaints will be provided on the customer's bill.

Ms. DiNicola stated COMTECH 21 has access to any financing and capital that would be necessary to conduct its telecommunications operations in South Carolina. COMTECH 21 is an established telecommunications provider that is currently certificated in thirty-seven states.

The testimony at the hearing and the record reveal that the Company will offer general long distance telecommunications services primarily to business customers in South Carolina. Ms. DiNicola testified that COMTECH 21 will market its services in South Carolina through sales agents, with no plans for telemarketing at this time. Ms. DiNicola stated that the Company's principal underlying carrier in South Carolina will be Global Crossing.

At the hearing, COMTECH 21 requested a waiver of the Commission's Rules and Regulations 26 S.C. Code Ann. Regs. 103-610 (1976). Commission Regulation 103-610 requires that all records required to be kept by a telecommunications utility be kept within the State unless otherwise authorized by the Commission. COMTECH 21 requests that it be allowed to maintain its books and records at its headquarters located in Wallingford, Connecticut. Ms. DiNicola acknowledged that COMTECH 21 is aware and agrees to abide by the Commission's regulation that requires that these records be made available for examination by the Commission at reasonable hours. COMTECH 21 also requested permission to maintain its books and records using Generally Accepted Accounting Principles ("GAAP") rather than the Uniform System of Accounts ("USOA"). Finally, COMTECH 21 requests that all of its business service offerings be regulated in accordance with the procedures described and set out in Order Nos. 95-1734 and 96-55 in Docket No. 95-661-C so that COMTECH 21's business services are regulated in the same manner as AT&T Communications of the Southern States.

Staff witness Crawford testified as to her findings of the Commission's Audit Department's review of the financial statements that were submitted with the Company's Application. Mrs. Crawford testified that she reviewed the unaudited financial statements for the six months ended June 30, 2000. The statements indicated that the Company had only been

operating a short time and was still in a start-up mode at the time of the financial statements. The unaudited balance sheet at June 30, 2000, indicated a very liquid company with assets being 100% cash. The current ratio, which is an indication of a company's ability to meet current liabilities with current assets, was a strong 11.42%. At June 30, 2000, COMTECH 21 had no long-term debt. The June 30, 2000, income statement reflected a loss, and while retained earnings were negative due to losses, shareholders' equity was positive due to additional paid in capital. Mrs. Crawford concluded that the financial statements submitted indicate a company that is extremely liquid and in good financial position.

Staff witness Lacoste presented testimony on the findings of the Commission's Utilities Department with respect to COMTECH 21's Application for a Certificate of Public Convenience and Necessity. According to Mr. Lacoste, COMTECH 21 seeks to offer long distance (IXC) telecommunications services within South Carolina utilizing resale arrangements. Mr. Lacoste noted that COMTECH 21 requests that its long distance business service offerings, including consumer card and operator service offerings, be regulated under "Alternative Regulation" as established in Order Nos. 95-1734 and 96-55 in Docket No. 95-661-C.

Mr. Lacoste also testified concerning suggestions that he made to COMTECH 21's proposed tariff as filed with the Application. Mr. Lacoste made suggestions regarding returned check charges, gross receipts taxes, interstate rates, late fees, marketing guidelines, special promotions, and adjustments to bills. Mr. Lacoste also requested that COMTECH 21 better explain and define certain rate plans contained in the tariff. The purpose of Mr. Lacoste's suggestions to the proposed tariff was to bring the proposed tariff into compliance with the Commission's Rules and Regulations.

After full consideration of the applicable law, the Company's application, and the evidence presented at the hearing, the Commission hereby issues its findings of fact and conclusions of law:

**FINDINGS OF FACT**

1. COMTECH 21 is organized as a corporation under the laws of the State of Delaware and is authorized to do business as a foreign corporation in the State of South Carolina by the Secretary of State.

2. COMTECH 21 operates as a non facilities-based reseller of interexchange services and wishes to provide its services in South Carolina.

3. COMTECH 21 has the experience, capability, and financial resources to provide the services as described in its Application.

**CONCLUSIONS OF LAW**

1. Based on the above findings of fact, the Commission determines that a Certificate of Public Convenience and Necessity should be granted to COMTECH 21 to provide intrastate interLATA service and to originate and terminate toll traffic within the same LATA, as set forth herein, through its own facilities and through the resale of intrastate Wide Area Telecommunications Services (WATS), Message Telecommunications Service (MTS), Foreign Exchange Service, Private Line Service, or any other services authorized for resale by tariffs of carriers approved by the Commission.

2. The Commission adopts a rate design for the long distance services of COMTECH 21 which are consistent with the principles and procedures established for

alternative regulation of business service offerings set out in Order Nos. 95-1734 and 96-55 in Docket No. 95-661-C.

Under the Commission approved alternative regulation set forth in Order Nos. 95-1734 and 96-55 in Docket No. 95-661-C, the business service offerings of COMTECH 21, including consumer card services and operator services, are subject to a relaxed regulatory scheme identical to that granted to AT&T Communications. Under this relaxed regulatory scheme, tariff filings for business services shall be presumed valid upon filing. The Commission will have seven (7) days in which to institute an investigation of any tariff filing. If the Commission institutes an investigation of a particular tariff filing within the seven days, the tariff filing will then be suspended until further Order of the Commission. Any relaxation in the future reporting requirements that may be adopted for AT&T shall apply to COMTECH 21 also.

3. With regard to any offering of residential long distance services, the Commission adopts a rate design for COMTECH 21 for its resale of residential interexchange services which includes only maximum rate levels for each tariff charge. A rate structure incorporating maximum rate levels with the flexibility for adjustment below the maximum rate levels has been previously adopted by the Commission. In Re: Application of GTE Sprint Communications Corporation, etc., Order No. 84-622, issued in Docket No. 84-10-C (August 2, 1984).

COMTECH 21 shall not adjust its residential interexchange rates below the approved maximum level without notice to the Commission and to the public. COMTECH 21 shall file its proposed rate changes, publish its notice of such changes, and file affidavits of publication with the Commission two weeks prior to the effective date of the changes. However, the public notice requirement is waived, and therefore not required, for reductions below the maximum cap in

instances which do not affect the general body of subscribers or do not constitute a general rate reduction. In Re: Application of GTE Sprint Communications, etc., Order No. 93-638, issued in Docket No. 84-10-C (July 16, 1993). Any proposed increase in the maximum rate level for residential services reflected in the tariff, which would be applicable to the general body of the Company's subscribers, shall constitute a general ratemaking proceeding and will be treated in accordance with the notice and hearing provision of S.C. Code Ann. §58-9-540 (Supp. 1999).

4. If it has not already done so by the date of issuance of this Order, COMTECH 21 shall file its revised tariff and an accompanying price list within thirty (30) days of receipt of this Order. The revised tariff shall be consistent with the findings of this Order and shall be consistent with the Commission's Rules and Regulations. Further, the revised tariff shall incorporate the suggested tariff changes made by the Commission Staff and to which COMTECH 21 agreed.

5. COMTECH 21 is subject to access charges pursuant to Commission Order No. 86-584, in which the Commission determined that for access purposes resellers and facilities-based interexchange carriers should be treated similarly.

6. With regard to the Company's resale of service, an end-user should be able to access another interexchange carrier or operator service provider if the end-user so desires.

7. COMTECH 21 shall resell the services of only those interexchange carriers or LECs authorized to do business in South Carolina by this Commission. If COMTECH 21 changes underlying carriers, it shall notify the Commission in writing.

8. The Company shall, in compliance with Commission regulations, designate and maintain an authorized utility representative who is prepared to discuss, on a regulatory level,



customer relations (complaint) matters, engineering operations, tests and repairs. In addition, the Company shall provide to the Commission in writing the name of the authorized representative to be contacted in connection with general management duties as well as emergencies which occur during non-office hours. COMTECH 21 shall file the names, addresses and telephone numbers of these representatives with the Commission within thirty (30) days of receipt of this Order. The form the Company shall use to file this authorized utility representative information can be found at the Commission's website at [www.psc.state.sc.us/forms](http://www.psc.state.sc.us/forms). This form is entitled "Authorized Utility Representative Information." Further, the Company shall promptly notify the Commission in writing if the representatives are replaced.

9. COMTECH 21 shall file surveillance reports on a calendar or fiscal year basis with the Commission as required by Order No. 88-178 in Docket No. 87-483-C. Annual reports and gross receipt reports are required by the Commission and necessitate the filing of intrastate information. Therefore, COMTECH 21 shall keep such financial records on an intrastate basis as needed to comply with the annual report and gross receipt filings. The forms the company shall use to file annual financial information with the Commission are found at the Commission's website at [www.psc.state.sc.us/forms](http://www.psc.state.sc.us/forms). The form for reporting annual information for interexchange services is entitled "Annual Information on South Carolina Operations for Interexchange Companies and AOS" and consists of two pages. Be advised that the Commission's annual report for telecommunications companies requires the filing of intrastate revenues and intrastate expenses.

10. With regard to the origination and termination of toll calls within the same LATA, COMTECH 21 shall comply with the terms of Order No. 93-462, "Order Approving Stipulation


and Agreement,” in Docket Nos. 92-182-C, 92-183-C, and 92-200-C (June 3, 1993), with the exception of the 10-XXX intraLATA dialing requirement, which has been rendered obsolete by the toll dial parity rules established by the Federal Communications Commission, pursuant to the Telecommunications Act of 1996 (See, 47 CFR 51.209).

11. COMTECH 21 has requested a waiver of 26 S.C. Code Ann. Regs. 103-610 (1976) so that the Company could maintain its books and records at its principal headquarters located in Wallingford, Connecticut. COMTECH 21 is granted a waiver from the requirements of Regulation 103-610 related to keeping its books and records within the State of South Carolina. However, as otherwise provided in 26 S.C. Code Ann. Regs. 103-610 (1976), COMTECH 21 shall make its records available for examination by the Commission at all reasonable hours. COMTECH 21 also requests that it be allowed to maintain its books and records in conformance with GAAP, rather than USOA. The Commission grants this request of COMTECH 21 but advises COMTECH 21 that it must maintain its books and records to account for intrastate revenues and intrastate expenses for reporting purposes to this Commission.

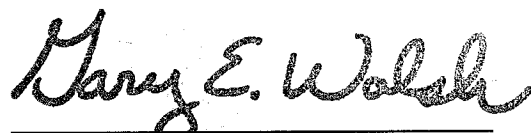
12. The Company is directed to comply with all Rules and Regulations of the Commission, unless a regulation is specifically waived by the Commission.

13. This Order shall remain in full force and effect until further Order of the Commission.

BY ORDER OF THE COMMISSION:

  
Chairman

ATTEST:

  
Executive Director

(SEAL)